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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,296	08/18/2003	Stephen F. Gass	SDT 342	4191
27630	7590	09/07/2005	EXAMINER	
SD3, LLC			ASHLEY, BOYER DOLINGER	
22409 S.W. NEWLAND ROAD			ART UNIT	
WILSONVILLE, OR 97070			PAPER NUMBER	

3724

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/643,296

Applicant(s)

GASS ET AL.

Examiner

Boyer D. Ashley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/24/05</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. This office action is in response to applicant's amendment filed 6/23/05, wherein claim 1 was amended; and claims 2-10 are canceled.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13 and 14 of copending Application No. 09/929,235 in view of Suzuki et al., U.S. Patent 5,791,224.

Application '235 claims the invention as substantially as claimed including a cutting machine having a safety and reaction system for preventing injury to a user; however, application '235 is silent as to the type of woodworking machine. Suzuki et al. discloses that miter saws are old and well known woodworking machines with, e.g., a base (1); a fence (the unlabeled workpiece abutment above reference character 11 in Figure 1); a motor (column 6, line 25-26); a rotatable blade (15) driven by the motor; and a pivot arm assembly (10) associated with the base and supporting the blade.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use the safety and reaction system of the application '235 with the miter saw structure of Suzuki et al.

This is a provisional obviousness-type double patenting rejection.

4. Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-7 and 21-29 of copending Application No. 10/047,066 in view of Suzuki et al., U.S. Patent 5,791,224.

Application '066 claims the invention as substantially as claimed including a cutting machine having a safety and reaction system for preventing injury to a user; however, application '066 is silent as to the specific details of the miter saw. Suzuki et al. discloses that miter saws are old and well known woodworking machines with, e.g., a base (1); a fence (the unlabeled workpiece abutment above reference character 11 in Figure 1); a motor (column 6, line 25-26); a rotatable blade (15) driven by the motor; and a pivot arm assembly (10) associated with the base and supporting the blade. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use the safety and reaction system of the application '066 with the miter saw structure of Suzuki et al.

This is a provisional obviousness-type double patenting rejection.

5. Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of copending Application No. 11/061,162 in view of Suzuki et al., U.S. Patent 5,791,224.

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Application '162 claims the invention as substantially as claimed including a cutting machine having a safety and reaction system for preventing injury to a user; however, application '162 is silent as to the type of woodworking machine. Suzuki et al. discloses that miter saws are old and well known woodworking machines with, e.g., a base (1); a fence (the unlabeled workpiece abutment above reference character 11 in Figure 1); a motor (column 6, line 25-26); a rotatable blade (15) driven by the motor; and a pivot arm assembly (10) associated with the base and supporting the blade. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use the safety and reaction system of the application '161 with the miter saw structure of Suzuki et al.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al, U.S. Patent 5,791,224 in view of Lokey, U.S. Patent 3,785,230, or Friemann et al., U.S. Patent 3,858,095, or Yoneda, U.S. Patent 4,117,752, and Tannewitz, U.S. patent 1,811,066.

Suzuki et al. discloses the invention substantially as claimed, including, e.g., a base (1); a fence (the unlabeled workpiece abutment above reference character 11 in

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Figure 1); a motor (column 6, line 25-26); a rotatable blade (15) driven by the motor; and a pivot arm assembly (10) associated with the base and supporting the blade. The Suzuki et al. lacks the safety system adapted to detect the occurrence of an unsafe condition between a person and the blade and a reaction subsystem adapted to mitigate the unsafe condition by disabling mechanism adapted to disable at least a portion of the blade upon detection of the unsafe condition.

However, Lokey, Friemann et al., and Yoneda, all discloses that it is old and well known in the art to use safety systems that detect unsafe conditions between a person and the blade and reaction systems that include disabling the blade by braking the blade for the purpose of protecting the user from injury. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use one of the safety and reaction systems of Lokey, Friemann et al., or Yoneda with the miter saws of Suzuki et al. in order to prevent injury to the user.

As to the phrase the intended use phrase "adapted to maintain its position adjacent the blade when the moves toward or away from the base" lacks any sufficient structure enable the function to occurs and the only requirement is for the prior art to be capable of alleged function. In this case, the brake of the modified devices of Suzuki et al. would be fixed relative to the blade and the housing and therefore, maintaining it position adjacent the blade during movement of the blade as it would be fixed. The above phrase in no way includes or requires any movement of the brake relative to the blade when the blade moves.

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In the alternative, Tannewitz discloses a brake that is configured to maintain its position relative to the blade upon movement of the blade for the purpose of ensuring the brake can engage the blade at any position of the blade. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to have the brake of the modified devices of Suzuki et al. move relative to the blade to ensure the brake is positioned to engage the blade at any position of the blade.

Response to Arguments

2. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Boyer D. Ashley whose telephone number is 571-272-4502. The examiner can normally be reached on Monday-Thursday 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Boyer D. Ashley
Primary Examiner
Art Unit 3724

BDA
September 5, 2005